September 2025

THE PEW CHARITABLE TRUST'S COMMENTARY

ON THE REVISED CONSOLIDATED TEXT: DRAFT REGULATIONS ON EXPLOITATION OF MINERAL RESOURCES IN THE AREA, DATED 29 NOVEMBER 2024 (ISBA/30/C/CRP.1)

Key

Black font, red font, and grey text-boxes are replicated from the Draft Regulations text.

Blue font represents commentary or edits proposed by The Pew Charitable Trusts.

Regulation 7

Form of applications and information to accompany a Plan of Work

1. Each application for approval of a Plan of Work shall be:

(a) in the form prescribed in Annex I to these Regulations;

(b) addressed to the Secretary-General; and

(c) prepared in accordance with these Regulations and the applicable Standards, and taking [into consideration] [~~account of~~] Guidelines.

2. Each applicant, including the Enterprise, shall, as part of its application, provide a written undertaking to the Authority that it will:

(a) Accept as enforceable [~~during all stages of the process chain~~] and comply with the applicable obligations created by the provisions of Part XI of the Convention, the Agreement, the rules, r~~R~~egulations and procedures [of the Authority], [including the applicable Standards and taking into account any applicable Guidelines] [~~of the Authority~~], the decisions of the organs of the Authority and the terms of its Exploitation C~~c~~ontract ~~with the Authority~~;

(b) Accept control by the Authority of activities in the Area [~~during all stages of the process chain~~] as authorized by the Convention;

(c) Provide the Authority with a written [~~substantiated~~] assurance that its obligations under its Exploitation C~~c~~ontract will be fulfilled in good faith; and

[(d) Provide the Authority with written undertakings from parent or holding companies of the applicant, if any, to assume joint and several liability for damages to the Authority in the event of liability having been established against the applicant in carrying out of the plan of work.]

3. An application shall be prepared taking into account these Regulations, the applicable Standards and Guidelines, as well as the respective Regional Environmental Management Plans.

3. bis. An application shall contain sufficient information to demonstrate that the applicant has [~~or will have~~] access to the necessary financial and technical capability and resources to carry out the proposed Plan of Work, and shall be accompanied by the following:

(a) The data and information to be provided pursuant to section 11.2 of the standard clauses for Exploration C~~c~~ontracts, as Annexed to the relevant Exploration Regulations;

(b) A Mining Work Plan prepared in accordance with Annex II to these Regulations;

(c) A Financing Plan prepared in accordance with Annex III to these Regulations;

(d) An Environmental Impact Statement prepared in accordance with Regulation 48 and in the format prescribed in Annex IV to these Regulations;

(d) bis A Test Mining study prepared in accordance with Regulation 48 ter [In cases where an applicant utilizes mature mining technology that has been internationally validated, there shall me no requirement to conduct Test Mining. Instead, the applicant shall provide supporting materials in relation to the mature mining technology when submitting the application];

(e) An Emergency Response and Contingency Plan prepared in accordance with Annex V to these Regulations;

(f) A Health and Safety Plan and a Maritime Security Plan prepared in accordance with Regulation 30 and Annex VI to these Regulations;

(g) A Training Plan in fulfilment of Article 15 of Annex III to the Convention, prepared in accordance with the Guidelines;

(h) An Environmental Management and Monitoring Plan prepared in accordance with Regulation 48 and Annex VII to these Regulations, ~~[which documents that management and monitoring [are in compliance with [take into account] the applicable Regional Environment Management Plan and based on the result of the Environmental Impact Assessment];~~ ~~[including information regarding the Environmental Management System that the Contractor will implement in accordance with Regulation 50 bis and the applicable Standards, taking into consideration Guidelines;]~~

(i) A Closure Plan prepared in accordance with Regulation 59 and Annex VIII to these Regulations;

(j) An application processing fee in the amount specified in Appendix II;

(k) ~~A copy of the Contractor's code of Conduct or other rules applicable to all staff involved in the execution of a proposed Plan of Work, including policies pertaining to personnel safety, environmental compliance, inclusivity, gender equality and diversity, and sustainability, which shall conform in material respects with the rules applicable to staff of the Enterprise or any other rules proposed by the Authority; and~~

(l) A copy of documents to evidence the applicant's Environmental Performance Guarantee, in accordance with Regulation 26.

4. Where the proposed Plan of Work proposes ~~2~~ two or more non-contiguous Mining Areas, the Commission shall require separate documents under subparagraphs 3 (b), (d), (h), (i) and paragraph l for each Mining Area, unless the applicant demonstrates [to the satisfaction of the Commission] that a single set of documents is appropriate, taking account of the relevant Guidelines. A decision can be taken by the Council in relation to one Mining Area at this time, with subsequent decisions for further Mining Areas being deferred to a later time upon the submission of further documentation.

5. Where a single set of documents is submitted by the applicant proposing a Plan of work for ~~2~~ two or more non-contiguous Mining Areas and the Commission considers it is not appropriate, the Commission shall reject the application and request separate documents under subparagraphs 3 (b), (d), (h), (i) and paragraph l for each Mining Area.

Comments

- There has been opposition to the proposed additions to paragraph 3bis (h) and (k). These opposed previous proposals are now proposed to be removed. Delegations are invited to consider the matter.
- It has been suggested that the bulk of this draft regulation may be better placed in Annex I.
- The proposed paragraph (d) may require further definitions to be considered (on the notion of parent or holding companies).

We note that paragraph **(2)(a)** speaks to "*the rules, Regulations and procedures of the Authority, [including the applicable Standards*"; 'including' indicating that Standards are RRPs. We have no objection to this, but if this is the case we suggest this should be made clear and consistent throughout the Regulations. One option would be to **define 'RRPs'** in the Schedule for the purposes of these Regulations (including Standards in that definition). This would bring a clear and mutual understanding of what is included within RRPs (and the word 'Standards' would not need to be repeated each time reference to RRPs is made in the Regulations).

In March 2024, various delegations (e.g. Russia, Germany, Spain, Argentina and the United Kingdom) proposed deletion of reference to **Guidelines** in (2)(a) as they do not create binding obligations, which are the subject of this paragraph. We thought that made sense and are unsure why the deletion has not been made.

We support new paragraph **(2)(d)**, which recognises the reality of many corporate structures, whereby a **parent company** or holding company may control the actions of a subsidiary and hold its assets but may legally evade liability for the acts of its subsidiaries. We suggest the wording here be replaced by a requirement to provide a **Parent Company Liability Statement** (to align with the Netherlands' proposal in that regard). Generally we would like to see this cover the liability of the applicant towards third parties (e.g. individual member States, other marine users etc) not only liability to the ISA. We also wonder if the joint responsibility should extend more proactively to a duty to ensure the contractor's compliance with its contract and the RRPs, not only to damages once non-compliance occurs? We support the idea of adding an agreed definition of 'parent company' and 'holding company' and suggest that relevant factors may include voting rights in the Contractor, powers to appoint or remove the Contractor's board of directors, having the right to exercise (or in practice exercising) control over significant operational decisions, or otherwise holding dominant influence over the Contractor.

We do not agree with the deletion of **old paragraph (2)(d)** (now no longer visible), which had required an undertaking from each Contractor that they would **comply with the sponsoring State's laws** and national measures. If any Contractor is not prepared to comply with relevant national rules, it would render the overall legal framework full of holes. There is also an added value to ISA of making compliance with national rules a condition of the ISA's contract. It would give the ISA power to take regulatory action in the event of breach of national laws (and not only in the event of breach if ISA rules). If compliance of national law is not a condition of the contract, then the ISA may be aware or notified (including by the sponsoring State) that a contractor is breaching national law but may be prevented from taking any regulatory action itself on that basis.

Annex III of UNCLOS (Article 6(3) refers to "undertakings concerning the **transfer of technology**" as a requirement of any application and a prerequisite to contract approval. This seems to have been omitted from DR7's list of undertakings.

In the chapeau to paragraph **(3)(bis)**, like other delegations who raised this point (e.g. during the March 2024 Council session we made a note of: India, Italy, Norway, United Kingdom, Jamaica, Poland, Cuba, Netherlands, and Uganda on behalf of the African Group), we support the deletion of 'or will have' regarding necessary financial and technical capability. That would make the applicant's **financial and technical capability** tests hypothetical at the time of application, rather than a review of the applicant's current capabilities, and would be contrary to the qualification criteria in UNCLOS and the practice established in the Exploration Regulations. As a matter of principle, we believe Exploration contractors should not be encouraged to apply for an Exploitation contract in the Area unless and until they genuinely have the financial and technical capabilities to deliver on their promises. An application for an Exploitation contract from the ISA should not be treated by private sector as a fundraising opportunity, and the Regulations should reflect this appropriately.

We have reservation over the proposed insertion in paragraph **(3)(bis)(d)(bis)**. If there is to be an exemption for the conduct of specific **test mining** activities, then (a) this needs to be agreed by Council and properly delineated in the

Regulations, and (b) we consider that a Test Mining Study (or should this be 'Test Mining Report' as per DR48 ter?) would still be required. In those circumstances, the Test Mining Study / Report would be the document that can set out what previous tests and operations the applicant relies upon and can provide the relevant evidence and validation to justify the lack of new test mining conducted specifically for the application. The intersessional Working Group on Test Mining may provide new insights on these matters.

Paragraph **(3)(bis)(g)** refers to the **Training Plan**. Unlike every other plan required from contractors, the draft Regulations set no minimum requirements nor direction as to content of the Training Plan. This should be addressed, ideally via a new Annex, to place the Training Plan on the same footing as the other plans. The current lack of coverage of Training Plans may give the impression that the ISA does not prioritise it as an important part of the Contract. As observed by the African Group in a 2019 submission to Assembly, under UNCLOS, '*training is envisioned as a key non-monetary benefit resulting from the implementation of part XI and as a means to introduce a degree of equity within the regime of the ISA for developing States, by sharing knowledge and building* capacity'. The Contractor's programme of training is a specific requirement of Annex III to UNCLOS. There is an opportunity here for Council to emphasise the importance of the training programme to be provided by contractors, and to take a lead to steer it in the direction that ISA member States, and particularly developing countries, would like to see. This opportunity is missed if the Regulations are just silent on the required content of the Training Plan.

The deletion made in **(3)(bis)(h)** seems sensible as it removes stipulations about the EMMP that are covered elsewhere in the Regulations.

We do not however support the deletion of the whole of paragraph **(3)(bis)(k)** which required copies of the applicant's **internal corporate policies** on specific topics pertaining to how they will conduct activities under an ISA contract, including the staff Code of Conduct. It is usual practice in other regulated industries for companies to set out the expectations for all staff on matters from safety to ethical behaviour including environmental performance. These materials should be mandatory reading for employees, aimed to embed a health, safety and environmentally conscious culture at the top of the organisation through all levels. It therefore makes sense to include such matters as a requisite component of the application, and as part of the evidence base for the ISA in assessing the credentials of the applicant. It seems self-evident that the ISA should not approve a contract with a company who has no such policies in place. But unless this paragraph (k) is included, we do not see that the ISA would have the relevant information before it to make such an assessment. The reference to the rules for the Enterprise or other rules proposed by the Authority, gives the ISA an opportunity to show leadership in setting minimum standards, which can provide some degree of harmonisation across contractors.

In **paragraphs (4) and (5)** we believe the reference to 'paragraph 1' should be to 'sub-paragraph (l)' [i.e. the letter L]. We support in principle the idea here that the Council may take a decision at the outset for one Mining Area only, with allowance to consider other Mining Areas within the same contract in the future. In practice there may be **different mining sites within the same contract area** that could be progressed at different times. We would generally support a graduated approach to the ISA's decision-making, in keeping with the precautionary approach and learning over time. We wonder whether this concept would benefit from separating into a new paragraph, for clarity – and may perhaps be better placed in DR16 which pertains to the Council's decision making on an application for Exploitation? Consideration may need to be given also whether there are other procedures required for the scenario (whereby a contractor is submitting documents for a new mining site, after already obtaining a contract for the larger Contract Area) – would this be treated as a modification of an existing Plan of Work under DR57, for example? It may be helpful to clarify this in the Regulations, and to check that the proposal fits within the decision-making processes set out in UNCLOS Part XI (as was queried by the United Kingdom in March 2024).